



State of New Jersey

DIVISION OF THE RATEPAYER ADVOCATE

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November 12, 1999

DOCKET FILE COPY ORIGINAL

CHRISTINE TODD WHITMAN
Governor

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Ratepayer Advocate
and Director

ECFS AND OVERNIGHT MAIL

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

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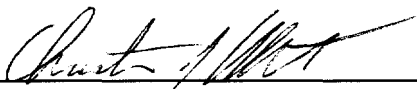
Re: I/M/O Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service, CC Dockets Nos. 96-262, 94-1, 99-249 and 96-45, FCC 99-235, Notice of Proposed Rulemaking (released September 15, 1999)

Dear Secretary Salas:

The New Jersey Division of the Ratepayer Advocate hereby submits its comments, as electronically filed, in response to the Notice of Proposed Rulemaking in the above-referenced docket. The FCC extended the date for receipt of comments to November 12, 1999.

Very truly yours,

Blossom A. Peretz, Esq.,
DIVISION OF THE RATEPAYER ADVOCATE

By: 
Christopher J. White, Esq.
Asst. Deputy Ratepayer Advocate

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local)	
Exchange Carriers)	CC Docket No. 94-1
)	
Low-Volume Long Distance Users)	CC Docket No. 99-249
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	

COMMENTS ON BEHALF OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

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INTRODUCTION & EXECUTIVE SUMMARY

The Division of the Ratepayer Advocate ("Ratepayer Advocate"), an independent agency of the State of New Jersey representing the interests of all classes of New Jersey consumers submits its comments in response to the Federal Communications Commission's ("FCC's") Notice of Proposed Rulemaking.¹ The FCC seeks comments on the integrated plan offered as non negotiable by the Coalition for Affordable Local and Long Distance Services ("CALLS") for access charges, universal service and price cap changes as outlined in its proposal to the FCC.²

The Ratepayer Advocate, for the reasons discussed below, urges and recommends that the FCC reject the CALLS proposal as submitted. There is no evidence, let alone empirical evidence, to demonstrate that the adoption of this proposal in whole or in part is in the public interest. In addition, the various issues raised herein are currently being addressed in multiple and separate ongoing FCC proceedings. These ongoing proceedings are the appropriate forum to address the relief requested by CALLS members. These other proceedings already have or are developing an extensive and fully documented record from which the FCC can decide the complex issues so that the public interest is served. For example, both the Universal Service and the Access Charge Reform

¹ See I/M/O Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service, CC Dockets Nos. 96-262, 94-1, 99-249 and 96-45, FCC 99-235, Notice of Proposed Rulemaking (released September 15, 1999) ("*NPRM*") in response to the proposal submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS"). CALLS members included AT&T, Bell Atlantic, Bell South, GTE, Sprint, and SBC.

² The CALLS proposal is comprised of three appendices, Appendix A, Appendix B and Appendix C. Appendix A is a detailed summary of the proposal addressing without limitation (1) ILEC recovery of Universal Service contributions, (2) common line rate structures simplification including deaveraging of common line rates and universal service, and (3) reducing traffic sensitive interstate access rates (hereinafter referred to as and cited to as "Appendix A"). Appendix B is the proposed amendments to various sections of the Code of Federal Regulations necessary to implement the provisions set forth in Appendix A (hereinafter referred to as and cited as "Appendix B"). Appendix C is a Memorandum In Support of the Coalition for Affordable Local and Long Distance Service Plan (hereinafter referred to as and cited as "CALLS Memorandum").

dockets have been open and active for over three years as part of FCC's effort to promote universal service and access reform. The CALLS proposal represents but one of many possible solutions to the issues now before the FCC. Accordingly, the Ratepayer Advocate recommends in the first instance that the FCC reject the CALLS proposal or in the alternative, the FCC decline consideration of the CALLS proposal at this time and defer consideration until the ongoing proceedings are concluded.

The CALLS Proposal Unfairly Favors ILECs and IXC's at the Expense of Consumers.

The Ratepayer Advocate submits that the plan proposed by CALLS would require residential and business consumers to pay more in flat rate charges by:

Revising the current system of Carrier Common Line charge ("CCL"), Subscriber Line Charge ("SLC") and Presubscribed Interexchange Carrier Charge ("PICC") applicable to residential and business lines to increase charges over the next three years by escalating the ceiling cap for such charges;

Establishing a portable universal service fund in the amount of \$650 million dollars that provides explicit support to replace the implicit support now provided through interstate access charges which would be recovered exclusively from flat rated charges to residential and business customers; and

Establishing an artificial floor under which traffic-sensitive switched access rates could not be reduced further through January 1, 2004.³

This proposal, if adopted and implemented, would result in guaranteed revenue streams in excess of TSLRIC pricing for local exchange service provided to residential and business customers by Incumbent Local Exchange Carriers ("ILECs")⁴ who are CALLS members and would set a

³ The specific details of the CALLS proposal are contained in Appendix A and the CALLS Memorandum.

⁴ When providing Unbundled Network Elements (UNEs) at wholesale, an ILEC does not receive the SLC. The competitive LEC is entitled to bill and receive this flat rated charge from end users. *See I/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection*

minimum floor on interstate access charges otherwise precluding and inhibiting further access charge reductions arising from competitive market forces. A floor on access charges benefits not only the ILECs but also the Interexchange Carriers (“IXCs”) that compete with them. Without the agreed upon floor on interstate access charges, competitive market forces should continue to exert downward pressure on access charges now and in the future when Regional Bell Operating Companies (“RBOCs”) are permitted to enter the in-region long distance markets under Section 271 of the Federal Telecommunications Act of 1996.⁵

This proposal is a **win win** proposal for ILECs and IXCs as CALLS members, and a **lose lose** proposal for customers who as end users under this proposal are asked (1) to pay, as **direct charges**, explicit Universal Service Fund charges and flat rate line charges in addition to tariffed monthly basic service charges; and (2) to indirectly pay higher per minute long distance charges in order to maintain interstate access charges above cost with the pricing of access set by interested parties at a prearranged and agreed upon floor.

The CALLS proposal fails to explain how the proposal affects the current SLC cap on the recovery of non-traffic sensitive (“NTS”) costs assignable to the federal jurisdiction through the separations process. Any plan considered by the FCC must insure that no more than 25% of costs are assigned to and recovered from each state. We believe that the current cap fully recovers all

between Local Exchange Carriers and Commercial Mobile Radio Service Providers, FCC 96-325, 12 FCC Rcd 15499 (1996) at ¶ 364 (*Interconnection Order*). The FCC’s default proxy rates fully compensate the ILEC for the cost of providing the loop. In New Jersey, the ceiling for deaveraged default proxy rates is \$12.47. This rate was set more than 3 years ago. With declining cost nature of telecommunications, this ceiling rate should be substantially lower now.

⁵ See Telecommunications Act of 1996, Pub. L. No. 101-336, 110 Stat. 56 (1996) *codified at* 47 U.S.C §271.

interstate assignable NTS costs in all states. Therefore, why should the cap be increased in three steps as proposed by CALLS? The fundamental premise underlying the FCC's long standing policies for recovery of NTS costs is that common costs of the integrated network are assigned to either the state or federal jurisdiction for recovery. As a result, once a given ILEC recovers all interstate assignable NTS costs for one state from the present SLC plus PICC charges, no further increase in either rate would be appropriate or legally justified. One can not recover more than the total costs assigned to the interstate jurisdiction from all the flat charge recovery mechanisms imposed by the FCC and currently in place. The CALLS proposal admits that the proposed combined SLC cap of \$5.50 is not necessary in all areas.⁶ However, no state by state analysis is offered regarding the impact of the proposal, which we believe is a minimum requirement for any serious consideration of the proposed plan.

This proposal frustrates and hinders the new paradigm that declares that competition and market forces should replace regulation as envisioned under the 1996 Act. CALLS members, who are direct competitors of one another are asking the FCC, through the auspices of seeking regulatory approval of the CALLS proposal, to insulate and protect them from competitive forces. They want to increase the cost for basic local exchange service to consumers through higher flat rate charges thereby increasing or maintaining ILECs' returns in the face of new competition. As the ILECs lose lines to CLECs as competition increases, this will cause the actual SLC rate to rise until the cap is reached. This means that ILECs will receive additional revenues because SLC charges will be higher. Similarly, both ILECs and IXCs want to impose a preset floor on access charges thereby

⁶ See Appendix A at Section 2, entitled "Overview". CALLS assert that combined total in most , but not all, areas will be less than \$5.50. This means that an average is involved. The current SLC cap is not based upon an average but is based upon a cap applicable to each state predicated upon state specific data.

precluding possible larger access charge reductions in the future due to competitive market forces. This leads to a reduction in or a constraint on further access charge reductions which further reduces the prospects for additional consumer savings in the form of lower rates from reductions in access charges. The combination of higher SLC charges and a floor on access charge reductions means that consumers are paying rates at levels that are neither fair nor reasonable. This raises substantive questions as to whether this proposal violates sections 201, 202, and 254 of the Communications Act of 1934, as amended. The sole beneficiaries are industry competitors and the detriments fall on consumers who will pay more for basic phone service, an essential service. This is contrary to the public interest and the intent of the 1996 Act. Moreover, in those low-cost states where all interstate NTS cost are 100% fully recovered from flat rate charges, the IXCs will, in essence be receiving free use of the local loop. The Ratepayer Advocate contends that such a result would not be consistent with good public policy, prior determinations of the FCC, or the Communications Act of 1934 (“Act”), as amended, in particular sections 201, 202 and 254 of the Act.

Residential Consumers Will Pay Higher Rates Without Realizing any Benefit.

Under the CALLS proposal, SLCs, PICCs, and CCL will be unified into a single charge, which can be deaveraged, but which will not exceed \$7.00 (referred to as a nominal cap) for residential and single line business lines.⁷ The SLC, PICC, and CCL charges are intended to reimburse the cost of the unseparated loop attributable to and used for interstate service. For primary residential lines and single line business lines, the combined total in most, but not all, areas will be

⁷ See Appendix A at Section 2.

approximately \$5.50 on January 1, 2000, as compared to the current total of \$5.00.⁸ In subsequent years, the primary residential and single line business, now combined, will increase to \$6.25 on January 1, 2001, to \$6.75 on July 1, 2002, and to \$7.00 on July 1, 2003.⁹ There are over 100 million residential lines in the United States.¹⁰ Under this proposal, residential customers would see a cost increase of \$50 million per month if this proposal is adopted. This cost would increase to \$200 million per month if the SLC charge reaches the cap of \$7.00 per month. In the short term, there is a huge monthly cost increase to consumers and over the long term, there could be a \$2.4 billion dollar increase on an annualized basis to consumers. The Ratepayer Advocate believes that consumers will pay more and rates will rise because the CALLS members would not ask for higher caps today if they believed rates over the five year period would fall.

Under this proposal, the maximum primary residence/single line business SLC in any zone is the lower of the nominal cap, or average price cap common line revenue per line (which includes all charges currently collected through SLCs, PICCs, CCL and a portion of local switching, but does not include ILEC USF contributions) for the highest cost UNE zone in a study area.¹¹ If the proposal is adopted, residential and single line business customers will pay more for a single line. For non-primary residential lines, which are second lines purchased by customers, residential customers will continue to pay more for a second line. A second line is assessed a SLC charge at the multiline rate

⁸ See Appendix A at Section 2.1.2.2 and footnote 21. The new SLC charge accelerates the 50 cent increase in PICC to be effective on July 1, 2000 under the regulations now in effect.

⁹ See Appendix A at Section 2.1.2.2.

¹⁰ The estimate of 100 million lines is based upon the residential lines reported by price cap LECs and referenced in the FCC's Memorandum Opinion and Order released June 1, 1998 in CC Docket No. 97-250. See *I/M/O Tariffs Implementing Access Charge Reform*, FCC 98-106 (released June 1, 1998).

¹¹ See Appendix A at Section 2 entitled "Overview".

which is capped at \$9.20. The current SLC multiline rate in New Jersey is above the new SLC rate for primary residential/single line business lines proposed by CALLS. The CALLS proposal offers a possibility that at some time in the future, SLC charges for second lines could be reduced.¹²

In addition, rather than using contributions from all interstate providers of telecommunications services based upon revenues, residential customers will also have to pay the explicit USF support through a new charge added to the monthly bills.¹³ The cumulative effect of these new charges will be higher flat rate charges on customers bills month after month. The new USF charge will be set at a rate to recover the \$650 million dollars in explicit support proposed by CALLS members. Support for USF is now provided through various implicit funding mechanisms which do not show up as flat rate charges on consumers bills. The CALLS proposal seeks to convert \$650 million dollars of that implicit support to explicit support and that explicit support will be recovered as a direct end user charge to residential and single line business customers. Consumers will be paying more than double the amount now included on their bills for federal charges associated with the unseparated loop.

By way of example, primary residential and single line business customers currently pay a SLC of \$3.50 and a PICC charge per line, which combined, does not exceed \$5.00. This rate will initially be set at \$5.50, a 50 cent increase, and thereafter it will further increase in steps from \$5.50 to \$7.00 under the CALLS proposal. For a second line, a residential customer now pays the multiline SLC rate which is below \$7.00 but also pays, directly or indirectly, the multiline PICC rate.

¹² See Appendix A at Section 2.1.2.2.3 which permits the elimination of the distinctions between primary residential and non primary residential lines, i.e. second lines.

¹³ See Appendix A at Section 1.

Today, the combined multiline SLC rate and PICC charges exceed \$9.00 dollars. Although under the CALLS proposal there may be a potential savings for residential customers on a second line at some point in the future, there are no immediate savings to residential customers on second lines to off set the higher \$5.50 SLC charge on primary lines and the addition of the new USF charge on the first and second lines.

If the maximum charges reflected in the CALLS proposal were implemented in New Jersey, the effect would be dramatic. Since no state by state analysis of the CALLS proposal's impacts have been provided, it is not clear whether the CALLS plan would actually result in rates for New Jersey consumers going up as drastically as it will in other higher costs states. But New Jersey consumers will pay more in flat rate charges then they pay now. In New Jersey, residential and single line business customers of Bell Atlantic New Jersey, Inc., a subsidiary of CALLS member Bell Atlantic, would pay almost the same or more in mandated federal charges then they pay for basic local service. This means that the effective rate for basic telephone service in New Jersey would be more than double the basic tariff service rate and just the monthly recurring charge alone, without any use, would be between \$16.00 and \$20.00. Currently, residential flat rate service in New Jersey ranges from \$6.75 to \$8.19 per month depending on the rate group zone and current business line message rate service ranges from \$10.65 to \$12.96 per month depending on the rate group zone. In view of the dramatic and significant costs to residential and small business consumers resulting from this proposal, the proposal is not in the public interest and should be rejected.

Small Businesses With Multiple Business Lines Will Pay Higher Rates Without Realizing Any Benefit.

Under CALLS proposal for multiline business lines, SLC and PICC charges are not

combined.¹⁴ The SLC charge is set at \$9.20 per line, which is the same as the current cap. The multiline business (“MLB”) PICC will continue to be charged by the ILEC to the Interexchange Carrier but will be reduced to \$4.00 in January 2000.¹⁵ CALLS asserts that the MLB PICC will fall dramatically for most companies as a result of reform in other flat-rate common line charges, and that the MLB PICC will eventually be eliminated in most areas. CALLS does not explain why residential and single line business customers must pay the PICC whereas multiline business customers are not required to do so. Apparently, IXC’s are willing to absorb the PICC and recover the cost through the rates charged to multiline business customers. IXC’s and ILEC’s under this proposal are effectively charging another low volume fee to residential and single line business users.

Under this proposal, multiline business customers, just as residential and single line business customers, will be paying more on their bills for federal charges associated with the unseparated loop. The cumulative effect of the direct and indirect federally mandated charges is to cause the minimum cost of basic local service to double when compared to the tariff rate for basic service. With no explanation, all multiline business customers are not treated equally and Centrex customers receive preferential treatment, in addition to the current preferential treatment of Centrex customers.

The proposal maintains the preferential treatment currently afforded Centrex customers. Centrex is a service that the LECs provide to large business customers. Centrex customers are billed

¹⁴ See Appendix A at Section 2, entitled “Overview”.

¹⁵ See Appendix A at Section 2.1.4.1.

the PICC on a 9-to-1 equivalency ratio.¹⁶ This means that only one multi-line PICC applies to every nine Centrex lines. The effective PICC on large business is therefore much lower than the PICC on smaller multiline business, as well as residential single business line customers. Such a result is contrary to the goal of fostering residential competition and conflicts with the public interest goal of fair and non-discriminatory treatment of all ratepayers. The fact that residential and single line business customers would be paying the PICC, while multiline business would not, further exacerbates the discrimination and unfairness of this proposal. The CALLS proposal should be rejected.

No Justification is Provided for the Different Treatment of Between Primary Residential/Single Line Business Lines and Multiline Business Lines.

The CALLS proposal seeks to perpetuate the two tier rate structure for SLCs and PICCs based upon whether a customer has a primary residential/single line business line, a non primary residential line (one or more additional residential lines) or a multiline business line.¹⁷ Although the current FCC rules specify different SLC and PICC charges based upon the category of line, the CALLS proposal would, for the most part, continue that two tier rate structure and substantially increase rates for each tier as discussed above. Similarly, the CALLS proposal seeks to impose a new USF charge on each tier, presumably at an identical rate/charge. The Ratepayer Advocate believes the two tier system of SLC and PICC charges as it now exists should be ended. There is no

¹⁶ See Appendix B, proposed revision to § 69.153(e) formally § 69.153(g) in Title 47 of the Code of Federal Regulations (C.F.R.).

¹⁷ The CALLS proposal provides for the elimination of the distinction between primary and non-primary lines residential lines when the condition set forth in Section 2.1.2.2.3. is met. The distinction may be eliminated when charges for primary and non-primary residential lines are equal within a zone or study area. However, there is no mandatory requirement to eliminate the distinction. It is merely discretionary.

valid basis for having different charges apply based upon the artificial categories identified. Functionally, there is no difference in any of the lines included in the various categories. Each line provides plain old telephone service (POTS) to the user, whether primary residential, non-primary residential or single or multiline business. This special treatment for Centrex lines should be ended as well. Each Centrex line should be assessed the same as each multiline business line which in turn should be assessed the same flat rate charges as each residential and single line business line.

From the users perspective, no differences exist in the use of one line versus any other line. The lines are indistinguishable from one another. The ILECs have repeatedly said over the past several years, a loop is a loop is a loop. Only the ILECs can discern which category the line belongs to. Imposition by regulation of different rates upon categories of lines that are functionally equivalent is not competitively neutral and is facially discriminatory. At the very least, the charges should be uniform for all users. The CALLS proposal not only seeks to perpetuate the discrimination but it increases the discrimination by treating the PICC for primary residential/single line business category differently from its treatment of the PICC for the multiline business line category. We urge the FCC to reject this approach.

The FCC Should Consider Eliminating SLC and PICC Charges for All End Users.

The FCC has consistently found that the loop is a common cost. Residential and small business customers should not have to pay SLC and PICC charges. The cost of the loop for POTS service is declining over time. While ILECs and IXC are currently making substantial investments in the loop, those investments are focused on broadband networks which will be used for services other than voice grade POTS service. The vast majority of residential, and small business customers need only POTS service. The tariffed rates for basic service have remained capped but the

underlying cost for the basic POTS network is decreasing. The practical effect of rate cap regulation when costs decline and rate caps stay fixed is that residential and small business customers are overpaying for POTS. The LECs use the overpayments to increase their earnings on behalf of shareholders and to fund broadband development and greater technology development which they hope will bring additional earnings. In effect, today's ratepayers who use POTS service are being asked to pay for broadband development which does not benefit them now and in the future they may or may not use.

The imposition of SCL and PICC charges on residential and small business customers means that residential and small business customers are asked to pay twice for the network of the future while IXC's and others enjoy a risk free opportunity. While broadband may open more choice and innovative technology to all consumers, the cost of broadband technology should not fall unfairly on consumers who need, want, and use only POTS. Under the CALLS proposal which raises SCL and PICC charges, residential and small business customers are asked to pay even more. This is not sound regulatory policy.

With the emphasis on competition and Universal Service for all under the Federal Telecommunications Act, the Ratepayer Advocate submits that the FCC should eliminate SLC and PICC charges as direct charges on end users. Residential and small business customers should not be asked to subsidize broadband development through high basic service rates and then also pay SLC and PICC charges on the misguided premise that these federal charges recover the cost of the loop. The SLC and PICC charges are merely assessments on residential and small business customers providing a broadband funding source to LECs and IXC's. They no longer bear a reasonable relationship to the recovery of the cost of the loop.

In a perfectly competitive market, IXCs and ILECs, as competitors, would sell bundled local service, long distance service and other packages of service including cable data and Internet services. The cost of the loop would be recovered from the rates that are charged for the full range of services provided to customers through the essential facility, the local loop. Customers would not be asked to pay an end user charge denominated as SLC or PICC charges since all costs would be recovered through the prices of the end service. Without the local loop, none of the other services could be provided or sold to customers. The continuation of SLC and PICC charges perpetuate the fiction that there are classes of services, intrastate and interstate. Particularly when the RBOCs obtain Section 271 approval and are able to provide long distance services, the distinctions will be even more hazy and even harder to justify. Residential and small business customers are unfairly shouldering the burden for this vestige of regulation. The FCC should consider ending this burden and eliminating SLC and PICC charges on end users. At the very least, the FCC should seek to reduce these charges to end users to reflect the reduced costs applicable to voice grade POTs service. Unfortunately, the CALLS proposal increases the burden on residential and small business customers who are supposed to benefit from the new competitive paradigm. Therefore, the Ratepayer Advocate urges the FCC to reject the CALLS proposal.

As an alternative to the complete elimination of SLC and PICC charges, the Ratepayer Advocate requests that the FCC establish a uniform maximum fixed flat rate for each and every line without any distinction between residential (primary or secondary), business (single or multiline) and Centrex lines. That uniform fixed rate should not exceed the current cap for primary residential lines of \$3.50 or should be fixed at some lower amount. In addition, the PICC charge should be eliminated. If the PICC is not eliminated, end users should have the option of choosing no PICC on

their lines without having to pay a recurring monthly charge. If no PICC is selected, a one time charge should apply and that charge should not exceed \$3.50, our proposed uniform fixed SLC charge. This approach would ensure the cost of the loop is shared and apportioned on a more equitable basis than currently is the case and would avoid the dramatic increase in costs the average consumer would be subjected to if the CALLS proposal was to be implemented.¹⁸ All low volume users would see a substantial reduction in their monthly bills for basic service. The opposite of course would occur if the CALLS proposal is adopted.

Reductions in Traffic-Sensitive Interstate Access Rates Should Not be Capped and the X Factor Should Continue.

CALLS members propose a substantial reduction of approximately 50% in traffic-sensitive interstate switched access rates. Specifically, the CALLS members assert that its proposal would cut in half, per minute interstate access charges from an average of over 1.1 cents per access minute to just over 0.55 cents per access minute for Bell Companies and GTE and 0.65 cents for other price cap ILECs, dropping significantly faster than they would under the Commission's existing rules.¹⁹

Under the proposal, these reductions are accomplished by continuing an X-factor of 6.5% and targeting "X-factor" adjustments to switched access elements until switched access charges other than carrier common line charges reach 0.55 cents per minute for the Bell Companies and GTE, and 0.65 cents per minute for other price cap incumbent LECs (called "Target Rate" of the applicable entity). Thereafter, average switched access rates for a filing entity are capped at these levels until

¹⁸ Under this alternative, Lifeline customers would not be assessed any charge for SLC, PICC, or no PICC.

¹⁹ See Appendix C, CALLS Memorandum, at p. 11 under "Switched Access" at paragraph (a).

at least January 1, 2005.²⁰ CALLS members contend that per minute access charge reductions will result in lower long distance bills. When the filing entity's average traffic sensitive interstate access charge reaches the Target Rate, then the X factor becomes equal to GDP-PI. All X-factor targeting is done at the tariff filing entity level, not at a holding company level. After one full year of X-factor reduction, an ILEC may choose not to target X-factor reduction from special access to reduce switched access rates.²¹

This proposal involves a major revision of the FCC's current regulatory structure. The reduction in switched interstate access rates is conditioned upon the abandonment of the X-factor which represents the average industry gain in productivity as part of the price cap formula and substituting in its place an X-factor tied to the reported inflation rate of the GDP-PI. After the Target Rate is achieved, there would be a major drop in the X-factor now at 6.5%, to the level of GDP-PI which is less than 2% at this time.²² This major reduction would insulate all LECs from further access charge reductions and assure all LECS and IXC's of having a floor on access charges.

The Ratepayer Advocate submits that this proposal is not in the public interest. Adoption of this proposal would be an abandonment of the basic concept of FCC price cap regulation. Price cap regulation replaced rate of return regulation based upon the argument of needed incentives for efficiency; that is, allowing companies to retain increased earnings if such earnings were attributable to increases in their efficiency in comparison to the industry as a whole. This proposal would allow LECs to increase their earnings in the future, without having to be more efficient, or even as efficient

²⁰ See Appendix A at Section 3.3.

²¹ *Id.* at Section 3.3.

²² *Id.* at Section 3.3.3.

as the industry. A lowering of the X-factor from 6.5% to the inflation rate automatically results in higher earnings under the rate cap formula. The ILECs would be rewarded with greater earnings for being in a declining cost industry. A lower X-factor would also insulate LECs from further price declines arising from increased competition. Of course, this would be advantageous both to ILECs and IXC's who will be competing in the same markets.

Adoption of this proposal would also lessen consumer protection and preclude and inhibit lower long distance rates. As competition increases due to the incentives given under the 1996 Act, one would expect to see further substantial reductions in access charges. Under competitive market theory, competition should drive prices to cost. The target rate for access charges is not at cost. As a result, the Ratepayer Advocate believes that rejection of this proposal will mean there will be no floor on access rates. Therefore, access rates will continue to come down and most probably those rates will be well below the target rates solely due to competitive pressures arising from the implementation of the 1996 Act. The residential and small business consumer can only benefit if this proposal is rejected.

No Case Has Been Made That Deaveraging of SLC Charges Will Serve the Public Interest.

The CALLS proposal seeks to implement a strategy for deaveraging SLC charges by zone. This would revise the current practice that has the LEC charge a uniform SLC for all zones within a state. The first hurdle with this proposal is that by combining the old SLC and PICC into a new SLC for residential and single line business customers, the new combined SLC, if deaveraged, would in effect result in deaveraging the PICC component. The FCC previously declined to consider deaveraging the PICC charge. In the May 1997 Access Charge Reform Order, the FCC rejected PICC deaveraging when it stated at ¶ 97:

We find that establishing a broad exception to section 254(g) to permit IXC's to pass through flat-rated charges on a deaveraged basis may create a substantial risk that many subscribers in rural and high-cost areas may be charged significantly more than subscribers in other areas. Accordingly, we cannot conclude that enforcing our rate averaging requirement is unnecessary to ensure that charges are just and reasonable. In addition, because assessing subscribers flat-rated charges on a deaveraged basis could lead to significantly higher rates for subscribers in high-cost areas, we find no basis in this record to conclude that it is unnecessary to enforce section 254(g) to ensure protection of consumers or to protect the public interest. In contrast, IXC's cite no countervailing public interest considerations but merely make broad, unsupported assertions of the need to deaverage rates in light of the varying PICC amount expected to be assessed by incumbents LECs.

The CALLS proposal merely touts that it will simplify bills and promote competition but without any detailed and concrete explanation of how this deaveraging proposal furthers the public interest or whether residential and small business customers will see any material benefits from deaveraging. The Ratepayer Advocate believes that the only beneficiaries will be the ILECs and IXC's who will be able to maintain their revenues in the face of competition, and large businesses who have been targeted by ILECs and IXC's. Large businesses will see their SLC and PICC charges reduced or eliminated while these charges for residential and small business will increase. This result is even more likely based upon the carve out for so called "Voluntary Reduction" contained in the proposed rules. Voluntary Reductions will enable ILECs to target reductions to large customers without having to deaverage rates in those zones that have a high concentration of large customers.

The Ratepayer Advocate sees the same propensity to discriminate against residential/ small business customers in favor of larger customers in the structure announced for limiting deaveraging of SLC in Section 2.1.5.1 of the CALLS proposal.²³ The four zone structure with customer class

²³ Appendix A at Section 2.1.5.3.

categories established pursuant to Section 2.1.5.1.4 seems to ensure higher rates in zone 1 and 2, the zones most likely to have substantially higher concentrations of residential and small business customers. This will result in residential and small business customers having higher SLC averages than large business customers. This is so because under Section 2.1.5.4,²⁴ the deaveraged rate for any customer class in the higher zone must exceed the deaveraged rate in the lower zone. Deaveraged rates will go up as one moves from zone 1 to zone 4. This places an incentive to keep zone 1 and zone 2 rates high for customers who are the largest in number, i.e. residential and small business.

The potential for discrimination is also increased because the SLC for residential and single line business customers includes the PICC whereas the SLC for multiline business customers excludes the PICC. The exclusion of the PICC coupled with the higher SLC rate for multiline business (\$9.20 versus \$7.00) can be manipulated to keep multiline business SLC higher than competitive conditions warrant because under Section 2.1.5.3, the multiline business SLC may not be lower than the primary residential and single line business SLC.²⁵

An equally significant problem with deaveraging is that LECs provide no analysis or examples of the actual effect deaveraging would have on ratepayers, in particular residential and small business customers, once implemented in particular states. There is no state specific examples of how deaveraging would work in practice and what ratepayers could expect. In addition, the deaveraging proposal permits deaveraging to occur without any requirement to obtain FCC approval in advance or alternatively to file an analysis to show the before and after affects on classes of customers. One must assume that deaveraging will increase rates for some and decrease rates for

²⁴ Appendix A at Section 2.1.5.4.

²⁵ *Id.* at Section 2.1.5.3.

others. There should be some opportunity for notice and comment before deaveraging can be implemented. The CALLS proposal is silent as to the procedures for implementation including identification of filing and support requirements. In short, the CALLS proposal provides no mechanism to assess the merits of deaveraging nor does it provide procedural mechanisms for implementation of deaveraging. As such, no public interest determination is possible at this time.

Conclusion

The proposal offered by CALLS is very complex and seeks to resolve many open issues involved in access reform and universal service implementation. However, in the short term, this proposal would increase flat rate charges to captive consumers by billions per year, would have consumers, as end users, pay for explicit universal service support in an amount of \$650 million and offers minimal reductions in long distance rates to be effectuated by a targeted reduction in interstate access charges of approximately 50% over the next five years while setting and maintaining an artificial floor on access charges, thereby precluding further reduction during this five year period. However, substantial reduction in per minute long distance rates due to competition are already here now. For example, AT&T's "7 cents a minute" and MCI's "5 cents a minute" plans offer low rates to consumers. The Ratepayer Advocate believes that rejection of this proposal is necessary to ensure that competitive market forces continue to operate and drive access rates below the proposed floor. Under the CALLS proposal, flat rate end user charges would rise and be capped at \$7.00 for residential and single line business customers, and flat rate charges to multi-business lines users would remain capped at \$9.20 with small businesses paying proportionally more per line than large businesses.

Cumulatively, if these cap maximums were imposed in New Jersey, the proposed changes

would have consumers paying more in flat rate charges and Universal Service Fund charges than they pay for local service. Since no state by state analysis is provided with the CALLS proposal, we have no assurance that this result would not be the effect in New Jersey. We do know that under the CALLS proposal, New Jersey consumers will see on their monthly bills higher flat rate charges and will pay more. Low volume users of long distance in New Jersey, under this proposal, would pay more for local service and obtain no savings from the reduction in access charges because they make few or no long distance calls. The adoption of this proposal would in no way reverse the new practice of imposing minimum monthly fees on low volume users. The CALLS members would continue with this trend. Minimum monthly fees on low volume users would remain and all consumers would pay higher flat rate charges.

Equally problematic and compelling is the fact that there is a complete lack of any empirical evidence demonstrating that this proposal would benefit consumers and otherwise serve the public interest. From a cursory look at New Jersey, this proposal has very negative consequences for New Jersey citizens. Other negative consequences most likely exist in other states as well. There can be no comparison, let alone an in-depth comparison, because there is simply no analysis accompanying the filing which would permit one to assess the impact on a state by state basis.

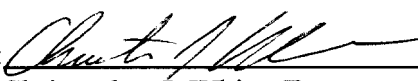
The intent of the Federal Telecommunications Act was to ensure the benefits of lower rates and greater advancements in technology for all classes of ratepayers through the new competitive marketplace. The CALLS proposal protects industry competitors and high volume business users at the expense of the residential and small business customers who depend on their telephone service for essential services, including life line services, and their livelihood and earnings. This proposal does not provide equal benefits to all classes of customers and in deed it negatively impacts the

largest number of customers, residential and small business customers who lack power in the marketplace.

In view of the foregoing, the Ratepayer Advocate urges the FCC to reject the CALLS proposal in its entirety as contrary to public interest.

Respectfully submitted,

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